

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

JOSEPH J. MEZYK, et al., Individually, and On
Behalf Of All Those Similarly Situated,

Plaintiffs,

vs.

U.S. BANK PENSION PLAN and U.S. BANCORP,
INC.,

Defendants.

Case No. 3:09-cv-384-JPG-DGW

Consolidated with:

THOMAS L. PELLETT and RICHARD A.
WILLIAMS, Individually, and on Behalf Of All
Others Similarly Situated,

Plaintiffs,

vs.

U.S. BANK PENSION PLAN,

Defendant.

Case No. 3:10-cv-696-JPG-DGW

MEMORANDUM AND ORDER

This matter is before the Court on Plaintiffs' Consent Motion to Modify Class Definitions (Doc. 147). Based upon the briefing filed and the hearing held on August 27, 2012, the Court finds as follows:

1. The definitions of Class 1 and Class 2 as certified were slightly over-broad and should be amended to exclude those individuals who first participated in the Mercantile Plan in the 1998 calendar year and therefore did not participate in the Mercantile Plan conversion at issue in this case.

2. The individuals to be excluded did not receive the settlement notice or any legal notice related to this case.

3. No prejudice would be done to any individual by excluding them from the Classes as they would not be bound by the terms of the settlement.

4. It is not necessary to re-notice the entire class with the proposed modified class definitions because it is the final certification order, and not the notice, that determines the *res judicata* effect of the judgment that will be entered in this case.

Therefore, the consent motion to modify (Doc. 147) is **GRANTED**. The Court modifies the certified class definitions for Count I and Count II (previously defined in the Court's order of July 16, 2012 (Doc. 142)) in Plaintiffs' Second Amended Consolidated Complaint as a class action on behalf of the following classes:

- a. **Class 1 (for Count I).** All plan participants in the Mercantile Bancorporation Inc. Retirement Plan as of January 1, 1999. Excluded from this class are Edward W. Sunder III; Louis R. Jarodsky; Eileen Chamberlain; all individuals who first participated in the Mercantile Plan during the calendar year 1998; Defendants' legal counsel (including members of Defendant's legal department); and any judge assigned to this case and any member of such judge's immediate family
- b. **Class 2 (for Count II).** All plan participants in the Mercantile Bancorporation Inc. Retirement Plan that were participants in the Plan as of January 1, 1999, and who were 45 to 49 years old on the date an opening balance was calculated for their cash balance accounts. Excluded from this class are Edward W. Sunder III; Louis R. Jarodsky; Eileen Chamberlain; all individuals who first participated in the Mercantile Plan during the calendar year 1998; Defendants' legal counsel (including members of Defendant's legal department); and any judge assigned to this case and any member of such judge's immediate family.

IT IS SO ORDERED.

s/J. Phil Gilbert
Hon. J. Phil Gilbert
United States District Judge

Dated this 28th day of August, 2012.